

SSCR

3

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM

February 19, 1996

SUBJECT: Procedure for Disapproving an Executive Order

TO: Senator Drue Pearce

FROM: Tamara Brandt Cook
Director *TBC*

You have asked what the procedure is for the disapproval of an executive order. The state constitution contains the requirement that disapproval of an executive order is accomplished ". . . by resolution concurred in by a majority of the members in joint session . . ." (Article III, Section 23) This must be complied with or any attempt by the legislature to disapprove an executive order will probably be held invalid by the court.

In addition to the procedure set out in the constitution, Uniform Rule 49(a)(4) provides

A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a joint committee and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

Prior to 1981 that same rule in identical language was contained in Uniform Rule 48(d). So, the uniform rule adds to the constitutional requirements the requirement that a joint committee consider each special concurrent resolution before it is adopted in joint session.

The literal language of the rule appears to require formation of a joint committee for the purpose of considering a special concurrent resolution. Uniform Rule 21(b) describes the formation of a joint committee as follows:

(b) A joint committee is a committee of both houses. A joint committee may be established only by the adoption of a concurrent resolution. The presiding officer of each house appoints one-half of the members of a joint committee. The persons who co-chair a joint committee shall be chosen in the manner provided by the presiding officers.

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Uniform Rule 21(d) provides further:

(d) A committee may not be established unless authorized by law or by the Uniform Rules.

Despite these rules, it has been the position of this office since at least 1981 that, because Uniform Rule 49(a)(4) does not specifically require the establishment of a joint committee under Rule 21, two standing committees meeting jointly would fulfill the requirement of consideration by a joint committee. The conclusion at that time appears to have been based on the established practice of the legislature in referring these resolutions to standing committees. That practice has never been formally challenged under a point of order so far as I have ascertained.

The legislature has not considered a special concurrent resolution very often, and, having checked back to 1975, I cannot find an example of the appointment of a joint committee to do so. In 1976, HSCR 1 was referred to the State Affairs Committee but went no further. (House Journal, page 73) In 1976 HSCR 2 was referred to the State Affairs Committee which met jointly with the Senate State Affairs Committee and was, ultimately, adopted in joint session. (House Journal, March 11, page 567) In 1977 SSCR 1 was referred to the Senate State Affairs Committee with a specific direction to meet jointly with the House committee. (Senate Journal, March 8, page 498) That resolution failed to pass in joint session. In 1980 HSCR 1 was referred to standing committees but went no further. In the Twelfth Legislature SSCR 1 was only referred to standing committees and never adopted. (Senate Journal, January 26, 1981, page 120) In the Thirteenth Legislature HSCR 1, HSCR 2, and SSCR 1 were referred to standing committees. Ultimately, the Rules Committees met jointly on SSCR 1 (disapproving Executive Order No. 53, establishing an office of management and budget) and on HSCR 1 (disapproving Executive Order 54, establishing the Department of Corrections). That same day both these resolutions were adopted in joint session. (Senate Journal, March 16, 1983, pages 407-410)

HSCR 1 was referred in the Sixteenth Legislature to standing committees and never adopted. In the Seventeenth Legislature, First Session, Executive Orders No. 78 and 79 were referred to standing and special committees (Senate Journal, January 21, 1991) but no action was taken to reject them. (Senate Journal, March 22, 1991) Executive Order 80 was returned to the governor as defective by the presiding officers. (Senate Journal, January 23, 1991) During the Second Session SSCR 1, disapproving a new Executive Order 80, was introduced and referred to a standing committee. (Senate Journal, January 13, 1992) That Executive Order was withdrawn by the governor. (Senate Journal, January 15, 1992)

As recently as 1994 SSHSCR 3 disapproving Executive Order 89 was referred to the House Labor and Commerce Committee, which met in a joint meeting with the Senate

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Labor and Commerce Committee. The House committee then reported the resolution out and the House sent a message to the Senate inviting it to attend a joint session for purposes of considering the resolution. It was considered and passed in joint session. (House Journal, 3/9/94, page 2699; Senate Journal, 3/9/94, pages 3100-3101) No Senate resolution was ever introduced, referred to Committee, or reported out.

Note that procedures of a joint committee differ slightly from procedures of two committees that meet jointly. Mason's Manual addresses the subject in Secs. 663-669. In both cases, members report separately to their bodies. Sec. 664 which indicates that a joint committee typically has a single chair has been superseded by Uniform Rule 21(b) which calls for co-chairs. Otherwise, it is significant to note that a quorum of a joint committee is a majority of the combined membership, while a quorum of each committee separately is required for action at joint meetings of separate committees. Additionally, members of a joint committee vote individually and not by house while action is taken separately by vote of each committee meeting jointly.

Lastly, note that sec. 669(1) states "A house may authorize or direct two standing committees to sit as one committee for the consideration of a specific bill or subject." While I am not aware of a case when two standing committees were actually directed to sit as one committee, this could be done. There have been instances when a standing committee was directed to hold a joint meeting with a committee of the other body.

TBC:glc
96-102.glc

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MEMORANDUM

January 22, 1996

SUBJECT: Transfer of postsecondary functions by E.O. 97
(Work Order No. 9-LS1557)

TO: Senator Lyda Green
Attn: Mike Tibbles

FROM: Michael F. Ford *M.F.F.*
Legislative Counsel

You have asked in what way does executive order 97 reduce the oversight power of the legislature or add to the authority of the executive branch. As explained in this memo, the executive order does make several changes to existing law, including the removal of legislators from the existing Alaska Commission on Postsecondary Education.

The executive order repeals the Alaska Commission on Postsecondary Education and transfers its duties to the Alaska Student Aid Corporation and to the Department of Education. Under AS 14.42.015(7), two members of the legislature presently serve on the commission. Under the executive order, the new board that governs the corporation does not have any legislative members. Therefore the executive order does result in removal of legislators from existing positions on an executive branch commission.

The presence of legislative members on the commission does raise constitutional issues. We believe that because the commission has regulatory powers, the placing of legislative members on the commission violates the Alaska Constitution's separation of powers doctrine. See Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). In addition to the separation of powers doctrine, there is a constitutional question regarding dual office holding prohibited under Article II, sec. 5 of the Alaska Constitution. This provision provides that legislators are prohibited from serving "in any other office or position of profit." In that members of the commission do not receive compensation, we believe that service on the commission does not constitute dual office holding as prohibited by the constitution, but the Attorney General has reached the opposite conclusion. See A.G. file no. 663-88-0371, February 29, 1988.

In addition to the elimination of legislative members of the commission, the transfer of functions to the corporation also results in elimination of the legislative power over confirmation of the governor's appointees. Under AS 14.42.015(c), the governor's

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appointees to the commission are subject to legislative confirmation. The proposed public corporation would have four public members (see sec. 8 of E.O. 97), but because the members serve on a public corporation, the members are not subject to legislative confirmation. See Walker v. Alaska State Mortgage Authority, 416 P.2d 245 (Alaska 1966).

Finally you should note that one of the functions of the commission is to review the annual budget and capital outlay requests of the University of Alaska. This function is being transferred to the Department of Education (Sec. 4 of E.O. 97). While I cannot say this directly affects legislative oversight, because legislators at present are members of the commission this change will remove one existing way in which members of the legislature also look at the budget of the University of Alaska.

In summary, the changes to the membership of the board, the elimination of legislative power of confirmation, and to a lesser degree the shift in functions of the commission appear to affect the oversight power of the legislature. Please contact me if you have further questions.

MFF:klb

96-018.klb

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSCR 3

Revision Date: Original Dept. Affected: _____
 Title: Disapproving EO 97 BRU: _____
 Component: _____
 Sponsor: Senate HESS
 Requester: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of any current year (FY96) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The estimated savings reflected in EO 97 will not be achieved in the manner proposed by the Governor.

Prepared by: Mike Tibbles Phone: 465-3762
 Division: Senate HESS Committee Date: 2/26/96
 Approved by Commissioner: _____ Date: _____
 Agency: Senator Lyda Green, Chair

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